

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3609 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHURA MAYABHATTI DAFER SINDHI

Versus

STATE OF GUJARAT

Appearance:

Ms. S.K. Bhatt for MRS MADHUBEN SHARMA for Petitioner
Mr. K.T. Dave, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/09/1999

ORAL JUDGEMENT

Heard, learned Advocate Ms. Jayshreeben Bhatt
for Mrs. Madhuben Sharma, Advocate for the petitioner
and learned A.P.P. Mr. K.T. Dave for the respondents.

The petitioner has approached to this Court under
Article 226 of the Constitution of India with a prayer to
claim appropriate writ or direction so as to quash and

set aside the order of detention dated 16-11-1998 passed by the respondent no.2 against the petitioner in exercise of powers conferred vide Sec.3(1) of the Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "PASA").

2. The petitioner has produced the impugned order and order of committal to Porbandar Jail as Class II prisoner vide Annexure "A" to the petition at pages 12 and 13 of the compilation.

3. That the grounds of detention supplied to the petitioner dated 16-11-1998 are produced vide Annexure "B" to the petition at pages 14 to 19 of the compilation. The grounds of detention inter alia suggest that the respondent no.2 on consideration of material placed before him had come to the conclusion that the petitioner is a "dangerous person" within the meaning of Sec.2(c) of "PASA". That all the provisions of general law are insufficient to prevent the petitioner from continuing his criminal and antisocial activities which affect adversely to the maintenance of public order, and as such, the impugned order is passed.

4. On perusal of the grounds of detention, it appears that six criminal cases are alleged to have been registered against the petitioner ranging from 7-11-1997 to 28-5-1998.

That the first offence registered against the petitioner and his accomplice is vide CR no.156/97 at Deesa City Police Station in respect to offences made punishable under Sec.392 read with Sec.114, IPC. It is alleged inter alia that on 7-11-1997 at around 1.30 the petitioner and his accomplice committed a robbery from the Tanker bearing no. SR 36/1791. That the driver was forcibly taken out from the cabin and amount of Rs.4700/-lying in the box was looted. It is also alleged that two pairs of clothes lying there valued at about Rs.200/- were also looted. That the petitioner was arrested on 15-6-1998 as a suspect and investigation proceeded. That the case filed against the petitioner is pending for trial.

The second offence registered against the petitioner is vide CR no.180/97 at Deesa City Police Station. It is alleged inter alia that on 7-12-1997 after 20.30 hours and before 6.15 hours on 8-12-1997 there was a theft of temple ornaments in the Jain Temple situated at Shreepal Society. That the lock of the temple was broke open and silver ornaments worth

Rs.93,750/- were stolen. That offences under Secs.457 and 380 of the Indian Penal Code was registered vide CR no.180/97 and during the investigation on 12-6-1998 present petitioner was arrested. That on completion of investigation, charge-sheet was filed and matter is pending for trial.

The third offence registered against the petitioner is vide CR no.182/97 at Deesa City Police Station. It is alleged inter alia that between 8.00 p.m. of 6-12-1997 to 11.00 a.m. of 8-12-1997 the lock of the door on the house of the informant was broke opened and tape recorder of Phillips Company worth Rs.2,950/-was stolen. That offence vide above said crime register was registered under Secs.457 and 380, IPC and during the investigation on 15-6-1998, the petitioner was arrested, the investigation has been completed and charge-sheet is filed in the Court. The matter is pending for trial.

The fourth offence registered against the petitioner is vide CR no.282/97 at Deesa Rural Police. It is alleged inter alia that between 1.30 p.m. and 5.00 p.m. on 16-12-1997 the informant was wrongly confined in a room by putting lock outside the room and ornaments belonging to the temple made of silver, clothes, utensils and amount of Rs.13,250/- from the charity box were stolen for which above stated crime was registered for the offences made punishable under Secs.342, 457, 380 read with Sec.114, IPC. That during the investigation, petitioner was arrested on 28-5-1998. That at the instance of the petitioner during the discovery Panchnama, 600 gms. of silver ornaments, a bell of brass and other goods worth Rs.4350/- was recovered. That on completion of investigation, the chargesheet is filed and trial is pending.

That the fifth offence registered against the petitioner is vide CR no.2/98 at Deesa Rural Police Station. It is alleged inter alia that during the night between 3rd January, 1998 and 4th January,1998, the lock of the main door of Jain Derasar was broke opened and ornaments belonging to the temple worth Rs.29,930/- were stolen for which an offence vide CR no.2/98 for the offences made punishable under Secs.457 and 380, IPC came to be registered. That during the investigation, petitioner was arrested on 4-6-1998 and at the instance of the petitioner under discovery Panchnama 800 gms. of silver and 7 gms 250 milligrams of gold approximately valued at Rs.7780/- were recovered. That on completion of investigation, charge-sheet is filed and the matter is pending for criminal trial.

That the sixth offence registered against the petitioner is vide CR no.109/98 at Deesa Rural Police Station. It is inter alia alleged that lock on the door of the depot of Chosath Mataji's Mandir, Kardosna Village, Taluka Deesa, District Banaskantha was broke opened and amplifier, speaker, wall clock etc. worth Rs.5800/- were stolen. The offence vide above stated CR was registered and during investigation, the petitioner was arrested on 10-6-1998. That on completion of investigation, the charge-sheet is filed and the matter is pending trial.

5. On the basis of the aforesaid material, the respondent no.2 has come to the conclusion that the nefarious criminal activities of the petitioner cannot be prevented by resorting to provisions of Secs.56 and 57 of the Bombay Police Act. That the said antisocial activities of the petitioner adversely affect the maintenance of "public order" and as such, the petitioner being a " dangerous person" within the meaning of Sec.2(c) of "PASA" it is necessary to detain the petitioner by exercising power under Sec.3(1) of " PASA". Hence, the impugned order is passed.

6. The petitioner has challenged the impugned order on numerous grounds. However, during the submission, the petitioner has restricted the contest to two contentions.

The first contention is that after the arrest on 28-5-1998, the petitioner was in judicial custody and is not released on bail in any of the matters and as such, the apprehension construed by the detaining authority on the basis of material is misplaced inasmuch as, the petitioner remaining in judicial custody cannot be said to have continued the alleged criminal and antisocial activities which is likely to affect adversely to the maintenance of public order.

The second contention urged on behalf of the petitioner is that the last incident of offence registered against the petitioner is dated 28-5-1998 and impugned order of detention is passed on 16-11-1998. Thus, there is unexplained delay of about 5 months and 18 days. That on account of such delay, the subjective satisfaction reached by the detaining authority is vitiated.

7. In the matter of ELES N. N. PATIL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997(1) G.L.H. 381, this Court having construed the earlier authority of

Apex Court in the matter of JAGAN NATH BISWAS V. THE STATE OF WEST BENGAL, AIR 1975 SC 1516 has taken a view that ipso facto passing of detention order after the delayed period from the date of incident is not fatal because in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

8. In the instant case, the last registered incident of alleged criminal activity of the petitioner is dated 28-5-1998 while the impugned action is taken on 16-11-1998. There appears to be considerable delay in passing the impugned order and a live link between the alleged criminal activities of the petitioner and the passing of the order appears to have been snapped. The inordinate delay has neither been explained in the grounds of detention nor any affidavit-in-reply has been filed despite the service of rule and contentions having been raised specifically in the memo of petition.

9. On the basis of the aforesaid discussion, I am constrained to hold that the impugned order of detention is bad in law because the subjective satisfaction reached by the detaining authority has been vitiated on account of inordinate delay without any satisfactory explanation and as such, the petition deserves to be allowed. The impugned order dated 16-11-1998 passed by the respondent no.2-District Magistrate, Banaskantha against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu- Bhura Mayayabhatti Dafer Sindhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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